IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No.343 of 1983
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For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

SHANKERLAL KALIDAS (DECD) THROUGH HIS HEIRS

Versus

FARSURAM MAHASHANKER DAVE

Appearance:

Shri Mehul Shah for Petitioners

Shri U.P. Vyas for Respondent

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 20/08/98

ORAL JUDGEMENT :

The petitioners herein are the heirs of the original defendant in Regular Civil Suit No.429 of 1977, which was filed by the respondent herein in the Court of learned Civil Judge, Junior Division, Anand. The suit was filed for recovering the possession of residential premises rented out to the petitioners, which are governed by the provisions of the Bombay Rents, Hotel and

Lodging House Rates Control Act, 1947 ("the Act" for brevity). The suit was filed on the ground of arrears of rent. The suit was decreed on 14.12.1981 on the ground available to the landlord for ejectment under sec.12(3)(a) of the Act.

2. The petitioners herein preferred Regular Civil Appeal No.26 of 1982 therefrom in the Court of learned Assistant Judge, Kheda at Nadiad. The learned appellate Judge took the view that section 12(3)(a) was not available to the landlord on the facts of the case, but section 12(3)(b) was available. He, therefore, dismissed the appeal. Being aggrieved by both these judgments and decrees, the present Revision Application is filed.

3. I have heard Shri Mehul Shah, learned advocate for the petitioners and Shri U.P. Vyas, learned advocate for the respondent. Shri Shah for the petitioners has principally raised two submissions;

(i) that the notice to quit given by the respondent/ landlord prior to filing of the suit was not a valid and legal one as required under sec.12(2). This he states on the basis that the notice does not contain any demand of standard rent or permitted increases as required under sec.12.(2) of the Act, and

(ii) that sec.12(3)(b) was not attracted to the facts of the present case and the appellate court could not have taken it for consideration.

With respect to the first submission concerning invalidity of the notice, Shri Shah for the petitioners has drawn my attention to the notice, which was given by the learned advocate for the respondent prior to filing of the suit. The notice dated 1.10.1974 was taken on record in the trial court as exhibit 43. It is addressed to Shri Shankerlal Kalidas, the original tenant.

4. Para 1 of the said notice narrates that the respondent is the owner of the concerned house situated in front of Narayandev Mahadev in Anand bearing Municipal No.7/1/3. It further states that the ground floor of the said house is given to said Shri Shankerlal on monthly payment of standard rent of Rs.40/-. That was excluding education cess. The notice further stated in para 1 that the period of month of the tenancy started on 14th of each English calendar month and ended on 13th of subsequent month.

5. Para 2 of the said notice states that said Shankerlal has not paid rent regularly and for quite some time he has not been paying it regularly. It further states that by the end of 13.11.1973, the arrears of rent got accumulated to Rs.426/-. Thereafter, i.e. from 14.11.1973 to 13.9.1974, i.e. for a period of 10 months, a further amount of Rs.400 became due. Thus, in all, Rs.826/- was due. The letter further records that the nephew of the respondent was paid an amount of Rs.50/- by said Shankerlal and further the wife of Shankerlal has paid Rs.400/- on 6.5.1974 by coming over to Ahmedabad. It is further stated that this way out of Rs.826/-, Rs.450/- was paid paid leaving behind the balance of Rs.376/-. It is further stated that education cess for the years 1972-73 and 1973-74 to the tune of Rs.24 had also remained to be paid. Thereafter, it is stated that this wise, the amount of rent for the period of more than six months has remained in arrears. It is stated further that, therefore, said Shankerlal was not entitled to continue to keep the premises as a tenant any further. It is further stated that the respondent was recording rent received in a dairy of Shankerlal and that is how Shankerlal was in the know of the entire account concerning rent.

6. It is the next para no.3 which is most important. When translated into English it reads as follows :

> "Since you are in arrears of rent for a period of more than six months as stated above, my client is legally entitled to terminate your tenancy. Hence by giving this notice your tenancy is hereby terminated and on completion of one rental month, on receiving this notice, i.e. by 13.11.1974, on the day on which you consider your rental month is completed, at the end of that day, you must hand over possession of the concerned house to my client. In case you fail to comply with the above, my client will take all necessary legal steps against you on the expiry of this notice for possession of the house as well as for recovery of the arrears of rent, etc. In such an event the responsibility of all necessary expenses will be on you. Same may be noted."

Last para of this notice calls upon Shankerlal to pay notice charges.

7. Having drawn my attention to the above notice as also para 3 of the said notice, Shri Shah for the

petitioners submits that there is no specific demand for payment of arrears of rent which is prerequisite for filing of the suit for ejectment under sec.12(2) of the Act. For ready reference sec.12(2) of the Act is reproduced hereinbelow :

> "No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non payment of this standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882)."

Shri Shah, therefore, submits that there has to be a specific demand in the notice and in the instant case there is none. Shri Shah for the petitioners relies upon a judgment of this Court in Khimji Bhimji Majithia v. Taraben Lalji Soni, XXIII [1982 (2)] GLR 114 (DB). In that case also, as can be seen from para 3 of the judgment, the notice issued on behalf of the landlady informed the tenant that he had hired the premises at the rate of Rs.100/- per month as rent, that he was in arrears of rent from 1.12.1973 to 30.6.1975 amounting to Rs.1900/- and that the tenant was liable to pay Rs.253.50 by way of education cess for the period between 20.12.69 and 30.6.75 and thus the tenant owed to her in all Rs.2153.50. Since the facts are almost identical, further particulars of the notice as incorporated in that para are reproduced hereunder :

> "The notice further proceeds to apprise the tenant of the fact that despite repeated demands, he had not paid that amount of rent and as the amount of rent had become due for more than six months, the landlord had become entitled to evict the tenant from the rented premises on the ground of non payment of rent. In the second paragraph, she then gives notice to the tenant that he should hand over her the possession of the rent premises on the expiry of the month of tenancy on 31.8.1975 or at any time after 15 days of the receipt of the notice when the tenant considered his month of tenancy getting over. The notice is rounded up with the further warning that if the tenant failed to do so (that is, to deliver possession on the expiry of the month of tenancy as aforesaid) the landlord would be constrained

to file a suit against him for recovery of possession and recovery of rent as per legal advice received by her."

After looking to the notice as it was issued in the facts of that case, the learned Judge came to the conclusion that there was no specific demand as per the requirement of sec.12(2) of the Act. In para 4 of the said judgment, the Division Bench held that :

"When the Legislature says that the suit for recovery of possession on the ground of non payment of rent shall not be instituted by the landlord unless requirement of that subsec.(2) of sec.12 is complied with, it is clear that the provisions of this subsec.(2) are mandatory."

8. Thereafter, in para 5 of the said judgment the Division Bench held that :

"In our opinion, therefore, the language of subsec.(2) of sec.12 in the context in which it has been placed and in the context of the avowed purpose of the legislature, requires that the notice must contain a specific demand of rent. It must tell the tenant that this is the last opportunity afforded to the tenant to pay up the arrears. When the words a subsec.(2) of sec.12 speak of the words "demand in writing," it is inevitable to hold that the demand must be there expressly. It cannot do to say for a landlord that if the statement of arrears is given in the notice, the tenant by necessary implication is told of the provisions of sec.12(1) and also of the provisions of sec.12(2) of the Rent Act and therefore, tacitly called upon to pay arrears. The Legislature, as we have stated above, was conscious of the comparatively more lack of knowledge on the part of the tenant and that is why the Legislature provided expressly that the notice in writing must demand of the tenant the arrears of rent. If there is only a bald statement of the amount of arrears of rent, an unwary tenant is likely to be misled into the belief that as he has been in arrears, say of six months or even of an year or two, his prospects are hopelessly and rudely marred and he has nothing to save himself against eviction. The Legislature wanted, therefore, that the tenant should know that the Legislature has extended

special kindness upto him and this kindness of the Legislature is expressed through the obligation which the Legislature has imposed upon the landlord. It is for this purpose that the landlord has been enjoined upon to call upon the tenant to pay up the arrears. Not only that, but after calling upon the tenant to pay up the arrears, the landlord is further asked to wait for one month from the date of the receipt of the notice by the tenant. In other words, the landlord is expected to wait for the full one month in order to see that the tenant avails himself of that extended benefit or opportunity and makes good the default. If the default is made good within that month, the landlord cannot file the suit, even though the tenant was in arrears, say for three years or 30 years. We, therefore, take into account the Legislative anxiety and also the Scheme of the Act and in this light also, the term "demand" is to be given its natural and ordinary meaning, which even otherwise would not have called for any other interpretation. It is the cardinal rule of interpretation that words should be given their normal and natural meaning. The word "demand" ordinarily cannot mean demand by implication or demand to be understood by a tenant in full know of legal implications. Even if there is such a remote possibility of the word "demand" to be construed in the said manner, the legislative background and the purpose of the legislature would take away whatever such remote possibility might be there. If the text of subsec.(2) of sec.12 is in this way interpreted as suggested by Mr.Adhyaru, the very Legislative object would be severely frustrated. We, therefore, find that the text of sec.12(2) of the Bombay Rent Act admits of no other interpretation. It casts an unalterable duty on the landlord to serve the tenant with a notice of express demand of rent and if there is no forthwith demand in the notice, the notice could be said to be bad or invalid for non compliance with the mandatory requirements of sec.12(2) of the Act."

Shri Shah, learned counsel for the petitioners submits that the facts of both these cases are almost identical and the law laid down is also very clear.

9. Shri Vyas for the respondent submits that the

notice is required to be read liberally and it was made clear to said Shankerlal as to what were the arrears and if they were not paid what would be the consequences. Shri Vyas, learned advocate for the respondent, therefore, submits that the requirements of sec.12(2) of the Act were complied with. On the facts narrated above it is difficult to accept the submission of Shri Vyas. The relevant para of the notice given in the present case is incorporated above. There is no specific demand made in that para and in an identical situation another Division Bench has clearly held that in absence of a specific demand the suit under sec.12(2) of the Act would not be maintainable. The Division Bench has also held that the provisions under sec.12(2) of the Act was a mandatory one. Looking to the manner in which the provision is made it cannot be left to any liberal interpretation, when it comes to interpreting a notice.

10. In the circumstances, the submission of Shri Shah for the petitioners deserves to be accepted on this count.

11. Inasmuch as the petitioners are succeeding on the first point, that goes to the root of the matter, there is no need to go into the second point raised by Shri Shah for the petitioners. For the reasons stated above, this Revision Application is allowed and the judgment and decree given by the trial court as well as by the appellate court are set aside. Rule is made absolute. There will not be any order as to costs.

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